

# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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In Reply To:  
9210(923)P

September 15, 2003

EMAIL TRANSMISSION - 09/16/03  
Instruction Memorandum No. MT-2003-075  
Expires: 9/30/04

To: Field Managers  
Attention: Planning and Environmental Specialists, Fire and Fuels  
Management Specialists, Foresters, and Rangeland Management  
Specialists

From: Deputy State Director, Division of Resources

Subject: Recent Instruction Memoranda (IM) concerning Categorical Exclusions  
for Hazardous Fuels Treatments and Post-Fire Rehabilitation Projects  
(WO IM 2003-221, change 1) and Full Force and Effect Decision  
Authority for Wildland Fire Management Decisions (WO IM 2003-232)

**Program Areas:** Fuels Treatment and Emergency Stabilization and  
Rehabilitation

**Purpose:** This information bulletin provides additional information and guidance concerning recent changes to regulations and departmental manual guidance governing use of categorical exclusions (CX) and full force and effect (FFE) decision authority concerning fuels treatment and post-fire rehabilitation and emergency stabilization projects.

**Background:** To ensure more timely decisions, greater efficiency, and better results in reducing the risk of catastrophic wildfire two new CXs (CX 1.12 regarding hazardous fuels treatments and CX 1.13 regarding post-fire rehabilitation) have been added to 516 Departmental Manual, Chapter 2, Appendix 1. Bureau offices were informed through IM 2003-221 that these new CXs were available for use in situations where no extraordinary circumstances exist that could potentially cause significant effects to the environment.

To meet the same purpose, the Bureau of Land Management (BLM) decisionmakers may also exercise FFE authority on appropriate fuels and emergency stabilization and rehabilitation projects in accordance with IM 2003-232. The BLM has added regulations allowing them to make wildfire management decisions effective immediately when they determine that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or when public lands are at immediate risk of erosion or other damage due to wildfire. These decisions are still subject to either the forestry regulations (43 CFR 5000) for forestry-related fire/fuels projects or the range regulations (43 CFR 4100) for range related fire/fuels projects.

**Policy/Action:** Attachment 1 provides additional guidance on when and how to use CXs for hazardous fuels treatments or post-fire rehabilitation. Attachment 2 provides guidance on use of FFE authority for fuels and emergency stabilization projects. Note: FFE authority is applicable regardless of the type of National Environmental Policy Act (NEPA) document (CX, environmental assessments (EA), or environmental impact statements (EIS)).

John Thompson will also be available to meet with field office fire/fuels specialists and resource specialists to provide guidance and answer questions during your interdisciplinary meetings concerning proposed projects.

**Timeframe:** Effective immediately.

**Manual/Handbook Sections Affected:** Affected manuals and handbooks are referenced in IM 2003-221 and IM 2003-232.

**Contacts:** For information concerning CXs, NEPA analysis and documentation, please contact John Thompson (406) 896-5030. For information about FFE authority on forestry related fire/fuels projects, please contact Bill Hensley (406) 896-5042 or Jim Gray (406) 896-2911. For information about FFE authority on range related fire/fuels projects, please contact Billy McIlvain at (406) 896-5028 or Jim Gray (406) 896-2911.

Signed by: Howard A. Lemm, Acting

Authenticated by: Merry Prestridge (MT923)

## 2 Attachments

- 1-Categorical Exclusions for Hazardous Fuels Treatments and Post-Fire Rehabilitation Projects (5 pp)
- 2-Full Force and Effect Decision Authority for Wildland Fire Management Decisions (3 pp)

## Distribution

SOMT - 1  
Asst. FM Havre - 1  
Asst. FM Glasgow - 1

## **Attachment 1: Categorical Exclusions for Hazardous Fuels Treatments and Post-Fire Rehabilitation Projects**

NEPA requires federal agencies to take a systematic, interdisciplinary approach to agency decisionmaking (CEQ 1502.6) including those relating to hazardous fuels treatments and post-fire rehabilitation. Documentation of the interdisciplinary environmental analysis and process required by NEPA may take the form of a CX, an EA, or an EIS. The complexity of the analysis and the level of documentation are related to the issues, controversy, and level of significance of environmental effects. The following guidance is intended to help you determine if the interdisciplinary analysis and documentation of the proposed fire/fuels project is appropriate for categorical exclusion.

Note: An EA may be prepared for proposed actions that otherwise qualify for a CX when the manager thinks an EA is appropriate and would be helpful in planning or decisionmaking (40 CFR 1501.3 and 516 DM 3.2 B)

### **Categorical Exclusions**

CXs are categories of actions that federal agencies have determined not to significantly affect the quality of the human environment (individually or cumulatively) and for which, neither an EA nor an EIS is required (40 CFR 1508.4). BLM managers are encouraged to apply CXs where suitable to reduce paperwork and speed implementation of decisions.

Department of Interior policy requires that categorically excluded actions be subjected to a NEPA determination process to see if they meet any exceptions to categorical exclusions (516 DM2). The CX process includes the following:

- Verify that the proposal is listed as a Departmental or BLM categorically excluded item,
- Check the ten exceptions to CXs, and
- Make a determination and document as appropriate.

### **Verify that the proposal is listed as a Departmental or BLM categorically excluded item**

To ensure more timely decisions, greater efficiency, and better results in reducing the risk of catastrophic wildfire two new CXs (CX 1.12 regarding hazardous fuels treatments and CX 1.13 regarding post-fire rehabilitation) have been added to 516 Departmental Manual, Chapter 2, Appendix 1. Proposed fire/fuels treatments must fall within the category of actions described in item 1.12 or 1.13 below:

- 1.12** Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities: shall be limited to areas (1) in wildland-urban interface and (2) Condition Class 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-interface; shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;" shall be conducted consistent with agency and Departmental procedures and applicable land

and resource management plans; shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.

- 1.13** Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities: shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and shall be completed within 3 years following a wildland fire.

**In summary:**

**1.12 Hazardous fuels reduction CXs will only be used for projects that:**

- Are based on collaboration among governments and stateholders at the local, state/regional, and/or national level,
- Are consistent with agency departmental procedures and resource management plans, and
- Are conducted in wildland urban interface, or
- Are in Condition Class 2 or 3 in Fire Regime Groups I, II, or III outside of the wildland urban interface.

**1.12 Hazardous fuels reduction CX will not include projects that:**

- Are in wilderness or wilderness study areas,
- Use herbicides or pesticides,
- Construct new permanent roads or infrastructure,
- Sell vegetative material when the primary purpose is not hazardous fuels reduction,
- Exceed 1,000 acres for mechanical treatments, or
- Exceed 4,500 acres for wildland fire use or prescribed fire treatments.

**1.13 Components of the Rehabilitation CXs:**

- Activities will take place only after a wildfire,
- Activities cannot use herbicides or pesticides,
- Activities cannot construct new permanent roads or infrastructure,
- Activities must be completed within three years following a wildland fire, and
- Activities cannot exceed 4,200 acres.

If the proposed treatment does NOT fall within either of the above descriptions, a CX is not the appropriate documentation for the NEPA analysis. An EA or an EIS would be the appropriate documentation for the NEPA analysis. If the proposed treatment does fall within the one of the above descriptions, review the ten exceptions to CXs listed below:

## **Review the ten exceptions to CXs**

The following exceptions from 516 Departmental Manual, Chapter 2, Appendix 2 apply to individual actions within CX description for 1.12 or 1.13 above. Check the proposed action against the following list of exceptions to determine if any of them apply. An EA or an EIS must be prepared for actions which may:

- 2.1 Have significant adverse effects on public health or safety.
- 2.2 Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains or ecologically significant or critical areas, including those listed on the Department's National Register of National Landmarks.
- 2.3 Have highly controversial environmental effects.
- 2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
- 2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
- 2.6 Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.
- 2.7 Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
- 2.8 Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.
- 2.9 Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.
- 2.10 Threaten to violate a Federal, state, local or tribal law or requirement imposed for the protection of the environment.

If one or more of the exceptions listed above apply to the proposed action, determine whether the proposed action can be modified to prevent it from triggering the exceptions. If this can be done or if none of the ten exceptions listed above apply to the proposed action, the action can be categorically excluded and it is appropriate to proceed with a determination and document as appropriate.

## **Make a determination and document as appropriate**

A decision memorandum documenting the use of the CX and documenting the manager's decision to implement the proposed project must be prepared. The Department requires documentation of the CX that must follow the template shown on the following two pages.

**Attachment 1: Template for Use in Preparing a Decision  
Memorandum to Support Application of Departmental Categorical  
Exclusions 1.12 and 1.13, 516 DM 2, Appendix 1**

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**Decision Memorandum on Action and for Application of:**

**Categorical Exclusions 1.12 (or 1.13 or both)**

**Project Name**

US Department of the Interior  
Bureau of Land Management  
(State Office, Field Office, etc.)  
County, State

**Description of the Proposed Action and the Purpose and Need for the Action**

[Provide a description of the purpose and need and provide any pertinent facts such as: applicable legal land description, statutory citations, and other agency involvements.]

**Plan Conformance**

[State that the Proposed Action is consistent with any land and resource management plans as required by appropriate Federal, state, or local statutes having a bearing on the decision.] [State that the Proposed Action was designed in conformance with all Bureau standards and incorporates appropriate guidelines for specific required and desired conditions relevant to project activities.] [Insert findings for other applicable laws.]

**Compliance with the National Environmental Policy Act**

[State that the Proposed Action is categorically excluded from further documentation under NEPA in accordance with 516 DM 2, Appendix 1, 1.12 (or 1.13 or both).] [Insert reasons.]

[State that the application of this CX is appropriate in this situation because there are no extraordinary circumstances potentially having effects which may significantly affect the environment.] [Clearly state that none of the exceptions apply. If any apply, then the CXs cannot be utilized.] [State that these extraordinary circumstances are contained in 516 DM 2, Appendix 2.]

I considered [insert any pertinent situations that were brought up during the design of the activities and explain why there is no potential for significant effects].

### **Persons and Agencies Consulted**

[Explain how the public was made aware of this proposed activity. Describe people and agencies consulted regarding the development of the action and steps taken based on this consultation.]

### **Decision and Rationale on Action**

I have decided to implement [insert description of actions, including mitigation measures and reference any maps and drawings]. These actions meet the need for action. In addition, I have reviewed the plan conformance statement and have determined that the proposed action is in conformance with the approved land use plan and that no further environmental analysis is required.

### **Implementation Date**

This project will be implemented on or after [insert implementation date and identify any conditions related to implementation].

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[Insert deciding official's name]                      Date

[Insert deciding official's title]

### **Administrative Review or Appeal Opportunities**

[State whether the decision is or is not subject to administrative appeal. If it is subject to appeal, provide the citation of the appeal rules and provide appeal information.]

For protest/appeal of wildland fire management decisions under forest management regulations: This wildland fire management decision notice, first published on (*month, day, year*), constitutes the decision document for the purpose of protests under 43 CFR Subpart 5003–Administrative Remedies. Protests pertaining to this decision must be filed in the (*name of the field office, address, state, zip*) within 15 days of this notice. [Published in a newspaper of local circulation.]

For protest/appeal of wildland fire management decisions under range management regulations: This wildland fire management decision notice, issued on (*month, day, year*), constitutes the proposed decision document for the purpose of protests under 43 CFR Subpart 4160–Administrative Remedies. Protests pertaining to this decision must be filed in the (*name of the field office, address, state, zip*) within 15 days of this notice. [Served on affected parties.]

### **Contact Person**

For additional information concerning this decision, contact [Insert contact name, title, Office Name, Mailing Address, and phone number].

## **Attachment 2: Full Force and Effect Decision Authority for Wildland Fire Management Decisions**

The authorized officer may make a decision concerning the proposed project after the proposed fuels treatment or post-fire rehabilitation project plan has been developed, the appropriate interdisciplinary NEPA analysis and documentation is completed, and resource management plan conformance is documented. As indicated in IM 2003-232, regulations have been added to allow the BLM to make wild fire management decisions effective immediately when the BLM determines that vegetation, soil, or other resources on public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or when public lands are at immediate risk of erosion or other damage due to wildfire, and to expedite review of those decisions. The process for determining when it is appropriate to use FFE authority includes the following:

- Identify what resources are at "substantial risk of wildfire" or "at immediate risk of erosion or other damage due to wildfire."
- FFE is discretionary. Determine if it is appropriate for the project.
- If FFE is appropriate, determine whether the project is governed by the range management regulations or the forestry regulations to determine when the decision becomes effective.
- Include appropriate documentation in the decision document and project file.

### **Identify what resources are at "substantial risk of wildfire" or "at immediate risk of erosion or other damage due to wildfire."**

The purpose and need for the project found in the NEPA document should discuss the "substantial risk of wildfire," the "immediate risk of erosion or other damage due to wildfire," or something similar to this that conveys the urgency for quick action. These concerns may also be addressed in more detail in the impact analysis of the project's NEPA analysis. In order to exercise the FFE authority, the manager needs to clearly determine that "vegetation, soil, or other resources on the public lands are at substantial risk due to drought, fuels buildup, or another reason, or at immediate risk of erosion or other damage due to wildfire."

An example of "immediate risk" may occur where fire destroys vegetation, especially on sloped land above a subdivision where homes may be at risk from mudslides in the event of a rainstorm. This is the type of situation that occurred in Deadwood, South Dakota, following the Grizzly Gulch Fire in 2002. Here, the time-related standard of "immediate risk" is appropriate for determining whether or not to immediately act to rehabilitate a denuded slope with erosion control such as straw-bale check dams, straw mulching, and seeding of severely burned areas above homes, businesses, and community buildings or facilities.

Prescriptive decisions aimed at preventing or reducing catastrophic wildfires may not be so obvious. A qualitative threshold of "substantial risk" may be more appropriate. For example, fuels buildup in areas of Fire Condition Class 3 would likely pose substantial risk of wildfire and the BLM would want to make fire management decisions for these areas effective immediately, especially where there is a high risk of escaped fire or loss of life or property. Many Fire Condition Class 2 areas would also be regarded this way, but field managers would decide on a case-by-case basis whether to make these

decisions effective immediately. Here the priority for immediate action may not be as great, especially if the area is considered to have low to moderate potential for escaped fire or loss of life or property. The BLM would generally not apply FFE authority on maintenance decisions for lands in Condition Class 1 with low escaped fire potential.

After identifying a "substantial risk of wildfire" or "at immediate risk of erosion or other damage due to wildfire," the manager would determine if FFE authority is appropriate for the project.

### **Determine if FFE authority is appropriate for the project.**

Managers have the discretion to determine when they think it is appropriate to use FFE authority. FFE authority may not be appropriate everywhere. It is likely to be more appropriate to immediately implement a rehabilitation project on a denuded slope where homes, businesses, and community buildings or facilities are at risk, than it would be where there is less potential for loss of life or property and where other resource conflicts may be an issue. FFE authority would be more appropriate for hazardous fuels reduction projects where there is a high potential for escaped fire and loss of life or property than in areas where there is low escaped fire potential and low risk to life or property. FFE authority would generally be more appropriate in a Fire Condition Class 3 area than in a Fire Condition Class 1 area.

Factors that may influence whether to use FFE authority could include level of controversy, issues, purpose and need for the project, coordination with other agencies, available resources, and other fuels reduction priorities. Ultimately, the manager must decide if FFE authority is appropriate for the project.

### **If FFE is appropriate, determine whether the project is governed by the range management regulations or the forestry regulations to determine when the decision becomes effective.**

The range management regulations (43 CFR Part 4100-Grazing Administration) and the forestry regulations (43 CFR Part 5000-Forest Management) have been revised to allow managers to exercise FFE decision authority on appropriate fuels and emergency stabilization and rehabilitation projects. However, the process and timing for implementing actions under FFE authority is different for each program and current guidance is unclear about how FFE authority is influenced by protest and appeal rights.

**Range Management Regulations (4190.1):** If the manager determines that the fuels or emergency stabilization and rehabilitation project involves actions associated with range management and occurs on lands generally considered to be rangelands (i.e. grasslands and shrublands) the range management regulations would apply. Because of the current uncertainty about the revisions to the regulations, if you plan to use FFE authority under these regulations it is important that, early in the planning stage, you contact Billy McIlvain (406-896-5028) who can explain the notification and timing requirements associated with protest and appeal rights related to range and grazing management decisions.

**Forest Management Regulations (5003.1):** If the manager determines that the fuels or emergency stabilization and rehabilitation project involves actions associated with forest management and occurs on lands generally considered to

be forestlands (i.e. forestlands and woodlands) the forest management regulations would apply. Because of the current uncertainty about conflicts within the regulations, if you plan to use FFE authority under these regulations it is important that, early in the planning stage, you contact Bill Hensley (406-896-5042) who can explain the notification and timing requirements associated with protest and appeal rights related to forest management decisions.

**Include appropriate documentation in the decision document and project file.**

The following language should be included in the appropriate decision document and project file when issuing a FFE decision for a hazardous fuels reduction or emergency stabilization or rehabilitation project:

"This wildfire management decision is issued under [**chose either 43 CFR 4190.1 for rangelands or 43 CFR Part 5003.1 for forests, or both when applicable. If both apply, notification and timing requirements for protests and appeals are different.**] and is effective immediately [**or insert another date established in the decision**]. The BLM has made the determination that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire. Thus, notwithstanding the provisions of 43 CFR 4.21(a)(1), filing a notice of appeal under 43 CFR Part 4 does not automatically suspend the effect of the decision. The Interior Board of Land Appeals must decide an appeal of this decision within 60 days after all pleadings have been filed, and within 180 days after the appeal was filed. (43 CFR 4.416)"